

FLAGER & ASSOCIATES, P. C.  
By: Randall C. Flager, Esquire  
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IN THE COURT OF COMMON PLEAS FOR BUCKS COUNTY, PENNSYLVANIA

JESSE SLOANE	:	CIVIL ACTION – LAW
and	:	
EDWARD TOKMAJIAN	:	
	:	
Plaintiffs	:	
v.	:	
	:	
JOSEPH DIGIROLAMO,	:	
JOSEPH KNOWLES, EDWARD	:	NO.
KISSELBACK, and JOSEPH PILIERI	:	
	:	
Defendants	:	COMPLAINT IN MANDAMUS
	:	AND DECLARATORY JUDGMENT

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance person-ally or by attorney and filing in writing with the court your defense objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Bucks County Bar Association  
Lawyer Referral  
and Information Service  
135 E. State Street  
Doylestown, PA 18901

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Defendants	:	COMPLAINT IN MANDAMUS
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I. PARTIES

1. Plaintiff, Jesse Sloane, is an adult individual and citizen and resident of Bensalem Township, Bucks County, Pennsylvania, and is also a duly elected Councilman in Bensalem Township, maintaining an office therein at 2400 Byberry Road, Bensalem, PA 19020.

2. Plaintiff, Edward Tokmajian, is an adult individual and citizen and resident of Bensalem Township, Bucks County, Pennsylvania, and is also a duly elected Councilman in Bensalem Township, maintaining an office therein at 2400 Byberry Road, Bensalem, PA 19020.

3. Defendant, Joseph DiGirolamo, is an adult individual and citizen and resident of Bensalem Township, Bucks County, Pennsylvania, and is also the Mayor of Bensalem Township, maintaining an office therein at 2400 Byberry Road, Bensalem, PA 19020.

4. Defendant, Joseph Knowles, is an adult individual and citizen and resident of Bensalem Township, Bucks County, Pennsylvania, and is also a duly elected Councilman in Bensalem Township, maintaining an office therein at 2400 Byberry Road, Bensalem, PA 19020.

5. Defendant, Edward Kisselback, is an adult individual and citizen and resident of Bensalem Township, Bucks County, Pennsylvania, and is also a duly elected Councilman in Bensalem Township, maintaining an office therein at 2400 Byberry Road, Bensalem, PA 19020.

6. Defendant, Joseph Pilieri, is an adult individual and citizen and resident of Bensalem Township, Bucks County, Pennsylvania, and is also a duly elected Councilman in Bensalem Township, maintaining an office therein at 2400 Byberry Road, Bensalem, PA 19020.

## II. STANDING

7. The plaintiffs named herein are residents and taxpayers in the Township of Bensalem who share an inherent interest in ensuring that their tax monies are not wrongfully misappropriated to the sole political benefit of a political party, but are rather used to protect and further the interests of similarly situated taxpayers within the Township.

8. Additionally, both plaintiffs are duly elected Councilpersons in the Township of Bensalem with a statutory obligation to safeguard the public coffer within the Township of Bensalem and to take necessary and appropriate action to prevent the misuse or misappropriation of taxpayer funds.

## III. FACTS

9. In or around December 4, 2018 the Township of Bensalem, through a 3-2 vote of Council, approved a budget which among other things, required a transfer of \$12.8 million out of

the Township's General Fund, depleting the Township's cash reserve significantly, and threatened to leave essential and emergency services unfunded, in order to pay for \$15 million of capital improvements.

10. Plaintiffs' opposition to the proposed budget was based entirely upon the fact that the capital improvements in question had been left completely unfunded in previous budgets passed by the defendants, resulting in a situation where the capital improvements could not be funded without a grossly reckless draw-down of the Township's general fund – resulting in the depletion of over two thirds of that fund.

11. Due to concerns over the fiscal irresponsibility of the budget as a whole, and concerns that it did not address the actual needs of the Township, the plaintiffs herein opposed the proposed budget and voted against the same. By a party-line vote, and over plaintiffs' objections, Council passed the budget.

12. Among the items provided for in the proposed budget was a "Homeowners Assistance Grant" which provides a cash rebate to homeowners in Bensalem Township, with additional amounts being provided for senior citizens and disabled persons.

13. The Homeowners Assistance Grant program has been ongoing for a number of years, and is a broadly popular program which enjoys the support of the entirety of Township Council, and which plaintiffs Sloane and Tokmajian explicitly endorsed and approved.

14. In years past, the checks sent to homeowners receiving checks under the Homeowners Assistance Grant program were accompanied by an enclosure letter advising homeowners why they were receiving the check.

15. In the most recent budget year, the letter which went out to homeowners specifically mentioned plaintiffs by name (even though neither had voted on the budget in

question) and which did not contain any type of partisan or political messaging, since Township funds, received from taxpayers, were used for the mailings. A true and correct copy of the letter provided to homeowners in 2018 is attached hereto as Exhibit “A”.

16. On October 5, 2019, however, defendant Joseph DiGirolamo drastically departed from the prior practice and instead used the occasion to convert taxpayer funds for personal political use, and to the benefit of the three Republican members of Township Council, by sending a letter on official Township letterhead which stated, in pertinent part, as follows:

Dear Fellow Bensalem Homeowner:

**On behalf of Councilmen Knowles, Kisselback and Pilieri**, I am pleased to provide you with your 2019 Bensalem Township Homeowners Assistance Grant. I am equally pleased to inform you that **thanks to the approval of my budget by these three members of our Township Council**, the Homeowners Assistance Grant Program is continuing this year in the amount of \$300. Your Grant check is enclosed, and it is our hope that this will help you to maintain or improve your home.

.....

We enjoy a great quality of life here in Bensalem, **and I am proud that during my time as your Mayor**, Bensalem has been recognized nationally and locally as “One of the 50 Best Places to Live in America”, “One of the 100 Best Communities for Young People”, and “A Model for America.”

17. Aside from an undue amount of credit-taking, the letter sent by defendant DiGirolamo (a true and correct copy of which is attached hereto as Exhibit “B”) was purposefully calculated to create the false impression that the plaintiffs oppose the Homeowners Assistance Grant program, which they do not.

18. Defendant DiGirolamo’s letter was further intended to further the purely partisan interests of the Republican Mayor and Republican members of Township Council in an

inappropriate manner during an election year in which defendants Kisselback and Knowles are running for office.

19. The use of taxpayer funds for a partisan political message is not only an ethical violation, but constitutes an express violation of the Pennsylvania Election Code, as discussed hereinafter.

## **COUNT I – ACTION IN MANDAMUS**

### **Plaintiffs v. Defendants**

20. Plaintiffs hereby incorporate by reference the averments set forth in the foregoing paragraphs of this Complaint as though the same were fully set forth at length herein.

21. The letter of October 5, 2019 which is the subject of this litigation was sent on official Township letterhead purchased through expenditure of taxpayer funds, and transmitted to every single eligible homeowner in the Township with postage purchased through the expenditure of taxpayer funds.

22. Defendants Knowles and Kisselback are “candidates” as defined at 25 Pa.C.S. §3241(a), in that both are individuals seeking election to public office in the coming election cycle.

23. The taxpayer-derived funds used for the letters and the transmittal thereof to eligible homeowners are “contributions” or their equivalents within the meaning of 25 Pa.C.S. §3241(b), because those funds were a thing of value which were improperly used to make expenditures by candidates for purposes of influencing an election.

24. The use of the taxpayer-derived funds to print copies of the defendant Mayor’s blatantly political communication, and to transmit them to voters within the Township,

constituted an “expenditure” by a candidate to influence an election within the meaning of 25 Pa.C.S. § 3241(d).

25. The funds used to generate and transmit the letters in question were not raised independently by any of the candidates on behalf of whom the letters were sent (specifically, the defendants named herein) as permitted by law, but were instead wrongfully misappropriated from the general funds of Bensalem Township.

26. No provision of law permits political candidates to appropriate general taxpayer funds for purely political messaging as the defendants have done here.

WHEREFORE, plaintiffs respectfully request this Honorable Court to enter an Order compelling the defendants to reimburse the Township of Bensalem for the costs and expenses associated with the generation and mailing of the October 5, 2019 letter referenced herein, as well as reimbursement to the Township of Bensalem of any funds of the Township expended to defend against this action.

## **COUNT II – DECLARATORY JUDGMENT**

### **Plaintiffs v. Defendants**

27. Plaintiffs hereby incorporate by reference the averments set forth in the foregoing paragraphs of this Complaint as though the same were fully set forth at length herein.

28. This Count of the herein Complaint is asserted pursuant to the Pennsylvania Declaratory Judgment Act, 42 Pa.C.S. § 7531 *et seq.*

29. Plaintiffs seek a declaration from the court finding that the actions of the defendants in causing a letter to be sent on their own behalf on Bensalem Township letterhead, furthering their partisan political interests in the run-up to an election, constitute a violation of the provisions of the Pennsylvania Election Code and a wrongful misappropriation of taxpayer funds for politically-oriented messaging furthering the interests of the Republican Mayor and Republican Council members with whom the defendant Mayor is allied.

30. Additionally, Bensalem Township is a Township of the Second Class, governed by the provisions of the Second Class Township Code, 53 P.S. § 65101 *et seq.*

31. Pursuant to section 704 of the Second Class Township Code, 53 Pa.C.S. §65704(3), the Township Treasurer is to pay out monies of the Township “only on direction by the Board of Supervisors.”<sup>1</sup>

32. At no time relevant hereto did the governing body of the Township of Bensalem approve or direct the use of taxpayer monies for an explicitly political message which benefits

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<sup>1</sup> Although the Second Class Township Code utilizes the term “supervisors”, Bensalem Township has established an optional form of government under the Home Rule and Optional Plans Act as discussed below, and accordingly any references to “supervisors” can be read as applying to “council”, since the Township has adopted an “optional plan” whereby it has a Mayor and a Council. The Home Rule and Optional Plans Act specifically defines “council” as a supervisor in a township of the second class. 53 Pa.C.S. §2902.



only the Republican officials within the Township, and accordingly, defendants have violated the express provisions of the statute.

WHEREFORE, plaintiffs pray for declaratory relief pursuant to the provisions of the Pennsylvania Declaratory Judgment Act, declaring that:

(a) The wrongful appropriation of taxpayer funds of the Township of Bensalem for the partisan political message embodied in defendant DiGirolamo's October 5, 2019 letter constitutes a violation of the Pennsylvania Elections Code; and

(b) That the appropriation and/or payment of Township funds for a partisan political mailing to benefit the defendants constitutes a violation of 53 Pa.C.S. §65704(3) on the part of the defendants.

FLAGER & ASSOCIATES, P.C.

/s/ Randall C. Flager  
Randall C. Flager, Esquire  
Attorney for Plaintiffs

**VERIFICATION BASED UPON PERSONAL  
KNOWLEDGE AND INFORMATION SUPPLIED BY COUNSEL**

I, Edward Tokmajian, verify that I am the Plaintiff in the foregoing action and that the attached Complaint is based upon the information which has been gathered by my counsel in preparation of this lawsuit. The language of the Complaint is that of counsel. I have read the Complaint, and to the extent that it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification.

I understand that intentional false statements herein are made subject to the penalties of 18 Pa. C.S. A. ' 4904 relating to unsworn falsifications made to authorities.



\_\_\_\_\_  
Edward Tokmajian

10/8/19  
DATED

**VERIFICATION BASED UPON PERSONAL  
KNOWLEDGE AND INFORMATION SUPPLIED BY COUNSEL**

I, Jesse Sloane, verify that I am the Plaintiff in the foregoing action and that the attached Complaint is based upon the information which has been gathered by my counsel in preparation of this lawsuit. The language of the Complaint is that of counsel. I have read the Complaint, and to the extent that it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification.

I understand that intentional false statements herein are made subject to the penalties of 18 Pa. C.S. A. ' 4904 relating to unsworn falsifications made to authorities.

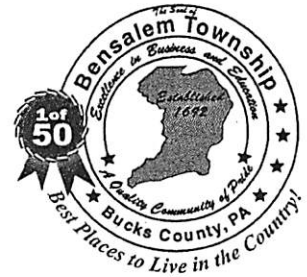
  
\_\_\_\_\_  
Jesse Sloane

10/8/19  
DATED

# EXHIBIT “A”

# Township of Bensalem

Joseph DiGirolamo  
Mayor



October 6, 2018

Dear Bensalem Homeowner:

Councilmen Pilieri, Knowles, Kisselback, Sloane, Tokmajian and I are pleased to provide you with your 2018 Bensalem Township Homeowners Assistance Grant. I am equally pleased to inform you that thanks to the approval of my 2018 Budget by a majority of the members of our Township Council, this year's Grant has been increased to \$300. Your Grant check is enclosed, and it is our hope that this will help you to maintain or improve your home.

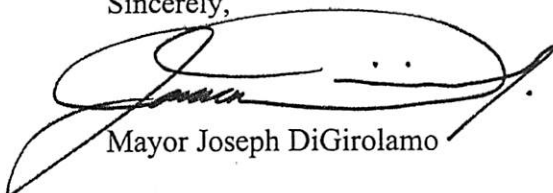
Council and I are also continuing the additional \$150 Grant for Senior Citizens (65 and older) and Disabled Persons in 2018. There are income eligibility requirements for these additional Grants and an application must be submitted to the Township. Applications are available in the Township building or by calling (215) 633-3620.

I am proud that during my time as your Mayor, Bensalem has been recognized nationally and locally as "One of the 50 Best Places to Live in America", "One of the 100 Best Communities for Young People", and "A Model for America". This recognition is the direct result of the efforts of countless individuals and groups who devote their talents, time and energy to making and keeping Bensalem a place that over 60,000 residents have chosen to make their home.

As always, please know that I consider it a privilege and an honor to serve as the Mayor of Bensalem Township, and that Council and I will continue to work together every day to ensure that our community remains a place that we can all feel safe and be proud to call home.

If you have any questions regarding the 2018 Homeowners Assistance Grant, please call our Finance Department at (215) 633-3620, Monday through Friday between 8:00 a.m. and 4:30 p.m.

Sincerely,



Mayor Joseph DiGirolamo

# EXHIBIT “B”



# Township of Bensalem

Joseph DiGirolamo  
Mayor



October 5, 2019

Dear Fellow Bensalem Homeowner:

On behalf of Councilmen Knowles, Kisselback and Pilieri, I am pleased to provide you with your 2019 Bensalem Township Homeowners Assistance Grant. I am equally pleased to inform you that thanks to the approval of my 2019 Budget by these three members of our Township Council, the Homeowners Assistance Grant Program is continuing this year in the amount of \$300. Your Grant check is enclosed, and it is our hope that this will help you to maintain or improve your home.

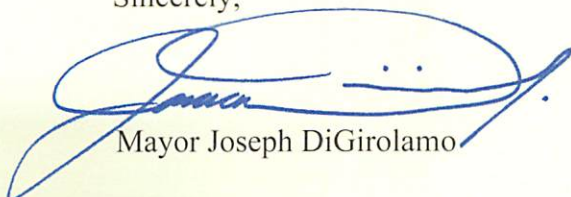
We are also continuing the additional \$150 Grant for Senior Citizens (65 and older) and Disabled Persons in 2019. As in the past, there are income eligibility requirements for these additional Grants, and an application must be submitted to the Township. Grant Applications are available in the Township Building or by calling (215) 633-3620.

We enjoy a great quality of life here in Bensalem, and I am proud that during my time as your Mayor, Bensalem has been recognized nationally and locally as "One of the 50 Best Places to Live in America", "One of the 100 Best Communities for Young People", and "A Model for America". This recognition is the direct result of the efforts of countless individuals and groups who every day devote their talents, time and energy to making and keeping Bensalem the place that nearly 65,000 residents have proudly chosen to make their home, raise their families, and enjoy their retirement years.

As always, please know that I consider it a privilege and an honor to serve as the Mayor of Bensalem Township, and that I will continue to work together every day to ensure that our community remains a place where we can all feel safe and be proud to call home.

If you have any questions regarding the 2019 Homeowners Assistance Grant, please call our Finance Department at (215) 633-3620, Monday through Friday between 8:00 a.m. and 4:30 p.m.

Sincerely,



Mayor Joseph DiGirolamo

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First Class Mail  
ComBasPrice



U.S. POSTAGE >> PITNEY BOWES



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